
Cross-border participation in capacity mechanisms

Proposed methodologies, common rules and terms of reference in accordance with Article 26 of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

31 January 2020

DISCLAIMER

This document is released on behalf of the ENTSO-E only for the purposes of the public consultation on the proposed methodologies, common rules and terms of reference in accordance with Articles 26.10 of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast). This proposal does not in any case represent a firm, binding or definitive ENTSO-E position on the content.

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DRAFT

Whereas

1. This document is a proposal developed by the European Network of Transmission System Operators for Electricity (hereafter referred to as “ENTSO-E”) regarding methodologies, common rules and terms of reference related to cross-border participation in capacity mechanisms (hereafter referred to also as “Proposal”) in accordance with Article 26 of Regulation (EU) 2019/943 of the European Parliament and Council of 5 June 2019 on the internal market for electricity (recast), hereinafter referred to as Regulation (EU) 2019/943.
2. The goal of Regulation (EU) 2019/943 is to establish rules to ensure the functioning of the internal market for electricity and ensuring security of electricity supply within the Union. As such, Recital (49) of Regulation (EU) 2019/943 specifies that “*detailed rules for facilitating effective cross-border participation in capacity mechanism should be laid down.*” This Proposal for cross-border participation in capacity mechanism fits within this objective.
3. A common approach —through this Proposal— for Transmission System Operators (TSOs) of every Member State in facilitating the participation of interested foreign capacity providers is key to achieve this goal.
4. The Proposal gathers the methodologies, common rules and terms of reference related to cross-border participation in capacity mechanisms listed in the Article 26(11) of Regulation (EU) 2019/943:
 - a. a methodology for calculating the maximum entry capacity for cross-border participation as referred to in Article 26(7) of Regulation (EU) 2019/943;
 - b. a methodology for sharing the revenues referred to in Article 26(9) of Regulation (EU) 2019/943
 - c. common rules for the carrying out of availability checks referred to in point (b) of Article 26(10) of Regulation (EU) 2019/943;
 - d. common rules for determining when a non-availability payment is due;
 - e. terms of the operation of the registry as referred to in point (a) of Article 26(10) of Regulation (EU) 2019/943;
 - f. common rules for identifying capacity eligible to participate in the capacity mechanism as referred to in point (a) of Article 26(10) of Regulation (EU) 2019/943.
5. Following point (a) of Article 26(11) of Regulation (EU) 2019/943 a methodology shall be established by ENTSO-E to calculate the maximum entry capacity: “*a methodology for calculating the maximum entry capacity for cross-border participation as referred to in paragraph 7.*”
6. The cross-border participation to capacity mechanisms shall be limited to the maximum entry capacity which takes into account the expected availability of interconnections and the likely concurrence of system stress between as set out in Article 26(7) of Regulation (EU) 2019/943: “*For the purposes of providing a recommendation to transmission system operators, regional coordination centres established pursuant to Article 35 shall calculate on an annual basis the maximum entry capacity available for the participation of foreign capacity. That calculation shall take into account the expected availability of interconnection and the likely concurrence of system stress in the system where the mechanism is applied and the system in which the foreign capacity is located. Such a calculation shall be required for each bidding zone border. Transmission system operators shall set the maximum entry capacity available for the participation of foreign capacity based on the recommendation of the regional coordination centre on an annual basis.*”
7. Following Article 26(12) of Regulation (EU) 2019/943: “*The regulatory authorities concerned shall verify whether the capacities have been calculated in accordance with the methodology referred to in point (a) of paragraph (11).*”

8. Following point (b) of Article 26(11) of the Regulation (EU) 2019/943, ENTSO-E shall submit to ACER a methodology for sharing the revenues: *“By 5 July 2020 the ENTSO-E shall submit to ACER: a methodology for sharing the revenues referred to in paragraph 9.”*
9. Article 26(9) of Regulation (EU) 2019/943 sets out the decision process on the actual sharing of the revenues and the application of the methodology for sharing the revenues, hereinafter referred to as Revenue Sharing Methodology, which is different in case capacity mechanisms allow for cross-border participation in two neighboring Member States or not: *” Where capacity mechanisms allow for cross-border participation in two neighboring Member States, any revenues arising through the allocation referred to in paragraph 8 shall accrue to the transmission system operators concerned and shall be shared between them in accordance with the methodology referred in point (b) of paragraph 11 of this Article or in accordance with a common methodology approved by both relevant regulatory authorities. If the neighboring Member State does not apply a capacity mechanism or applies a capacity mechanism which is not open to cross-border participation, the share of revenues shall be approved by the competent national authority of the Member State in which the capacity mechanism is implemented after having sought the opinion of the regulatory authorities of the neighboring Member States.[...]”*
10. The stipulations in Article 26(9) of Regulation (EU) 2019/943 identify the revenues considered by this Revenue Sharing Methodology as the revenues arising from the allocation of the entry capacity.
11. The stipulations in Article 26(9) of Regulation (EU) 2019/943 also imply that other methodologies than the Revenue Sharing Methodology can be applied.
12. The use of the revenues obtained by a TSO is set out in Article 26(9) of Regulation (EU) 2019/943: *”[...] Transmission system operators shall use such revenues for the purposes set out in Article 19(2).”*
13. The scope of designing common rules for the carrying out of availability checks in capacity mechanisms is set out in Article 22(1) point (d) of Regulation (EU) 2019/943: *“Any capacity mechanism shall select capacity providers by means of a transparent, non-discriminatory and competitive process.”*
14. The requirement for ENTSO-E to establish common rules for the execution of availability checks is set out in Article 26(11) points (c) & (d) of Regulation (EU) 2019/943: *“By 5 July 2020 the ENTSO for Electricity shall submit to ACER: [...] (c) common rules for the carrying out of availability check referred to in point (b) of paragraph 10; (d) common rules for determining when a non-availability payment is due [...]”*.
15. The requirement to Member states for imposing non-availability payments, when participants do not meet their obligations is set out in Article 26(6) of Regulation (EU) 2019/943: *“Capacity providers shall be required to make non-availability payments where their capacity is not available. Where capacity providers participate in more than one capacity mechanism for the same delivery period, they shall be required to make multiple non-availability payments where they are unable to fulfil multiple commitments.”*
16. Point (a) of Article 26(10) of Regulation (EU) 2019/943 refers to a process by which *“the transmission system operator where foreign capacity is located shall establish whether interested capacity providers can provide the technical performance as required by the capacity mechanism in which the capacity provider intends to participate, and register that capacity provider as an eligible capacity provider in a registry set up for that purpose.”*

17. In accordance with Article 26(10)(c), the TSO where the foreign capacity is located should notify the TSO in the Member State applying the capacity mechanism of the relevant information it has acquired.
18. Member States shall allocate the entry capacity in a transparent, non-discriminatory and market-based manner as set out in Article 26(8) of Regulation (EU) 2019/943: *“Member States shall ensure that the entry capacity referred to in paragraph 7 is allocated to eligible capacity in a transparent, non-discriminatory and market-based manner.”*
19. The requirement to Member States for allowing participation of Foreign capacity providers is set out in Article 26(1) of Regulation (EU) 2019/943: *“Capacity mechanisms other than strategic reserves and where technically feasible, strategic reserves shall be open to direct cross-border participation of capacity providers located in another Member State, subject to the conditions laid down in this Article”*, provided that *“foreign capacity is capable of providing equivalent technical performance to domestic capacities”* in accordance with Article 26(2) of Regulation (EU) 2019/943.
20. The requirement to Member States for facilitation of cross-border participation in capacity mechanisms is set out in Article 26(3) of Regulation (EU) 2019/943: *“Member States shall not prevent capacity which is located in their territory from participating in capacity mechanisms of other Member States.”*
21. Article 26(14) further requires that eligible capacity providers notify the registry of transfers of allocated entry capacity for the participation of foreign capacity in a capacity mechanism.
22. This Proposal sets out the terms of the operation of the registry and defines common rules for identifying capacity eligible to directly participate in the capacity mechanism of another Member State.
23. Article 27 (2) of Regulation (EU) 2019/943 stipulates that *“before submitting a proposal, the ENTSO-E shall carry out a consultation involving all relevant stakeholders, including regulatory authorities and other national authorities. It shall duly take the results of that consultation into consideration in its proposal.”*
24. In conclusion, the Proposal contributes to the general objectives of Regulation (EU) 2019/943 to the benefit of all market participants and electricity end consumers.

TITLE 1

General provisions

Article 1

Subject matter and scope

- a. Based on Regulation (EU) 2019/943, the following terms and conditions or methodologies shall be developed and implemented by each Member State with respect to the design principles by which capacity mechanisms should abide.
- b. The methodology for calculating the maximum entry capacity for cross-border participation laid down in this Proposal shall be considered as the proposal of ENTSO-E in accordance with point (a) of Article 26(11) of Regulation (EU) 2019/943.
- c. The Revenue Sharing Methodology laid down in this Proposal shall be considered as the proposal of ENTSO-E in accordance with Article 26(11)(b) of Regulation (EU) 2019/943.
- d. The common rules for the carrying out of Availability checks (hereafter referred to as “Common Rules related to Availability”) in accordance with Article 26(11) in point (c) of Regulation (EU) 2019/943 laid down in this Proposal shall be considered as the proposal of ENTSO-E in accordance with Article 26(11) in point (c) of Regulation (EU) 2019/943.
- e. The common rules for determining when a non-availability payment is due (hereafter referred to also as “Common Rules related to non-availability payment”) in accordance with Article 26(11) in point (d) of Regulation (EU) 2019/943 laid down in this Proposal shall be considered as the proposal of ENTSO-E in accordance with Article 26(11) in point (d) of Regulation (EU) 2019/943.
- f. The terms of the operation of the registry (hereafter referred to as “European Registry”) in accordance with Article 26(11) in point (e) of Regulation (EU) 2019/943 laid down in this Proposal shall be considered as the proposal of ENTSO-E in accordance with Article 26(11) in point (e) of Regulation (EU) 2019/943.
- g. The common rules for identifying capacity eligible to participate in the capacity mechanism in accordance with Article 26(11) in point (f) of Regulation (EU) 2019/943 laid down in this Proposal shall be considered as the proposal of ENTSO-E in accordance with Article 26(11) in point (f) of Regulation (EU) 2019/943.
- h. To the extent the national frameworks facilitate the involvement of DSOs, TSOs may engage in a collaboration with DSOs to ensure the good execution of this Proposal. A transition period can be foreseen during which only TSOs address the tasks mentioned in this Proposal. This transition period shall end when the cooperation framework needed to involve all relevant DSOs is achieved.
- i. Direct cross-border participation to a Reliability Option type of capacity mechanisms may result in a cost gap between foreign and domestic capacity contracts to cover part of payback obligations not covered by Foreign contracted capacity. If cost gaps are identified by the TSO or the capacity mechanism operator applying a reliability option capacity mechanism due to the implementation of cross-border participation, solutions could be sought at national level or in bilateral agreements among involved Regulatory Authorities according to Article 26.9 of Regulation (EU) 2019/943.
- j. A transition period is needed to implement this Proposal in a timely manner after it is approved.

Article 2

Definitions and interpretation

For the purposes of the following common rules, methodologies and terms of operation, the terms used in this document shall have the meaning of the definitions included in Article 2 of Regulation (EU) 2019/943.

In addition, in this Proposal, unless the context requires otherwise, the following definitions and their interpretations shall be used:

- a. 'Availability' means the possibility of Activation of the capacity contracted in the capacity mechanism and concerns:
 - a) the availability in the energy and/or balancing market and/or ancillary services markets.
 - b) for capacities contracted in the capacity mechanism but not participating to the market, the availability to deliver energy upon request of the TSO and/or in particular system conditions.
- b. 'Availability checks' means actions taken by the TSO where the contracted capacity is located in order to establish the availability for energy delivery of contracted capacity in any point of time during the Reference period of capacity mechanism.
- c. 'Capacity Market Unit (CMU)' is the single unit or group of aggregated units used by the capacity provider to fulfil its capacity commitment and upon which availability is checked.
- d. 'Capacity Mechanism' is defined in accordance with Article 2(22) of Regulation (EU) 2019/943.
- e. 'Capacity Mechanism Contract' means the contract between the CM operator and the capacity provider enabling the capacity provider to get a remuneration for its availability during the Reference period.
- f. 'Capacity Mechanism Operator' or 'CM Operator' is the market operator of the capacity mechanism. It can either be the TSO or an independent market operator.
- g. 'Delivery Period' means the period set in the CM Contract during which the capacity obligation applies.
- h. 'Domestic Capacity' means a capacity located in the same Member State applying the capacity mechanism.
- i. 'Eligibility' means the compliance with technical performance as required by the capacity mechanism in which the capacity provider intends to participate.
- j. 'Entry Capacity' means the capacity, expressed in MW, that can be allocated to eligible foreign capacity for participation in a capacity mechanism. Its total amount can never exceed the Maximum Entry Capacity.
- k. 'Foreign Capacity' means a capacity located in a Member State different from the Member State applying the capacity mechanism.
- l. 'Maximum Entry Capacity' means the maximum allowed foreign capacity (expressed in MW) considered between two Member States that can participate in a capacity mechanism during a certain Delivery Period.
- m. 'Activation' means the process in which the capacity contracted in the capacity mechanism delivers energy upon request by the TSO and/or in particular system conditions during the Delivery period.
- n. 'Non-availability volume' means the difference between the capacity subject to availability obligation for a given Delivery period and the amount of capacity made available by the capacity provider for each CMU as resulting from availability checks.
- o. 'Non-availability payment' refers to any penalty that should be charged to the capacity provider for each CMU due to its Non-availability volume according to the rules of the capacity contract.

- p. ‘Reference period’ means the period during which the Availability checks are carried out. It can coincide with the Delivery period or be a subset of the time period of the Delivery period (e.g. scarcity hours which can be identified by the TSO according to a pre-defined process and/or directly by publicly observed market or system characteristics).
- q. ‘Registry’ means the common digital platform set up for the purpose of registering capacity providers as eligible as referred to in point (a) of Article 26(10) of Regulation (EU) 2019/943.
- r. ‘Registry User’ means a person having access to the Registry.
- s. ‘Energy Not Served (ENS)’ means the amount of energy demand – measured in MWh – which is not supplied in a given zone and in a given time period due to insufficient resources to meet demand.
- t. ‘Scarcity’ refers to a situation during which ENS is strictly greater than zero in a given system and in a given time period because national production, demand reduction measures and total possible imports are insufficient to meet demand.
- u. ‘Scarcity hours’ for a given bidding zone are defined as hours during which the corresponding bidding zone has an importing position after market clearing coupling and for which the value of the hourly Energy Not Served (ENS) is strictly greater than 0 MWh/hour, after considering the effect of curtailment sharing within the market coupling algorithm.
- v. ‘Near-scarcity’ means a situation during which ENS is zero but any demand increase or supply decrease would cause a scarcity situation because national production, demand reduction measures and total possible imports are fully used to meet bidding-zone demand.
- w. ‘Scarce asset’ means either the transmission capacity or the electricity resources of neighbouring systems that are operating at their maximum capacity and hence limiting the resolution of a scarcity situation.
- x. ‘Total available capacity’ means the total installed electricity production capacity that is available in the system under consideration.
- y. ‘Total possible import’ means the total electricity import to the system under consideration that is technically possible.
- z. ‘Net Transfer Capacity’ (NTC) model means a capacity calculation method based on the principle of assessing and defining ex-ante a maximum energy exchange between adjacent bidding zones as referred to in Article 2 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.
- aa. ‘Flow-based’ approach means a capacity calculation method in which energy exchanges between bidding zones are limited by power transfer distribution factors and available margins on a critical network element as defined in Article 2 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.
- bb. Flow-based Market Coupling (FBMC) means: a mechanism to couple different electricity markets, increasing the overall economic efficiency, while considering the available transmission capacity between different bidding zones using the flow-based approach/model as referred in Article 2 of Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.
- cc. Curtailment sharing rule means: a part of the market coupling algorithm, which aim is to equalize as much as possible the curtailment ratios between those bidding areas that are simultaneously in a curtailment situation.

Article 3

Costs incurred by the implementation of cross-border participation

1. In the context of cross-border participation, costs incurred related to tasks listed in Article 26.10 of Regulation (EU) 2019/943 should not be borne by the TSO where the Capacity Market Unit is located.
2. The TSO where the capacity is located should budget the operational and investment costs incurred related to tasks listed in Article 26.10 of Regulation (EU) 2019/943 and notify such a budget to its NRA.
3. Based on this proposal, the NRAs of the TSOs and CM Operator should agree on appropriate costs incurred related to tasks listed in Article 26.10 of Regulation (EU) 2019/943.
4. To cover these costs in the cost coverage system of the capacity mechanism in a similar way as to costs arising from tasks analogous to tasks listed in Article 26.10 of Regulation (EU) 2019/943 carried out for domestic Capacity Provider, the National Regulatory Authority where the capacity mechanism applies specifies technical details on how these costs are to be covered after having sought the opinion of the NRA where the capacity is located. This decision shall not impact the general grid fees of the country where the Capacity Market Unit is located.
5. The TSO where the capacity is located shall be entitled to recover any remaining costs incurred by the implementation of cross-border participation which are not recovered by contributions listed in Article 3.3. and 3.4. and which are assessed as reasonable, efficient and proportionate in a timely manner through grid tariffs of the Member State where the capacity is located or other appropriate mechanisms as determined by the competent regulatory authorities.

TITLE 2 The Proposal

Section 1

Methodology for calculating the maximum entry capacity for cross-border participation in accordance with Article 26.11(a) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

Article 4

Scope of the methodology for calculating the maximum entry capacity for cross-border participation

The Methodology for calculating the maximum entry capacity for cross-border participation does not apply when interconnectors participate directly in the capacity mechanism in the sense of Article 26(2) of Regulation (EU) 2019/943.

The methodology for calculating the maximum entry capacity for cross-border participation to capacity mechanisms shall “*calculate [...] the maximum entry capacity available for the participation of foreign capacity. That calculation shall take into account the expected availability of interconnection and the likely concurrence of system stress in the system where the mechanism is applied and the system in which the foreign capacity is located*”, as stipulated in Article 26(7) of Regulation (EU) 2019/943.

Therefore, the methodology shall determine the expected contribution of imports that a country or bidding zone can rely upon in moments of stress, i.e. during which these imports are needed to ensure the adequacy of this country or bidding zone.

The methodology for calculating the maximum entry capacity for cross-border participation to capacity mechanism shall consider situations during which the country or bidding zone, after using all its available national production and market-based demand reduction measures, still requires imports to ensure adequacy of its system. In other words, the country or bidding zone depends on imports from neighboring systems to cover its demand and mitigate scarcity.

The methodology distinguishes between two different situations in which, after using all available national production and demand reduction measures, imports are not sufficient to avoid scarcity in the considered country or bidding zone:

- a. Transmission capacity is the scarce asset – The considered country or bidding zone cannot import more power from its electrical neighbours, even if these neighbouring countries/bidding zones still have available power which can be exported. In this case the maximum transmission capacity has been reached and it can be said that the transmission capacity is the scarce asset.
- b. Resource capacity is the scarce asset – The considered country or bidding zone cannot import more power from its electrical neighbours, even if transmission capacity is still available for imports. In this case the exporting countries/bidding zones have most likely reached their maximum possible export capabilities, so all their available national measures are used to cover its own demand and to provide maximal exports. In these cases, it can be said that the resource capacity of the

considered country or bidding zone and its electrical neighbours is the scarce asset, since all these countries are maximally using the available resources and maximally exporting.

Article 5

Definition of scarcity hours

Scarcity hours are defined as hours during which the value of the Energy Not Served (ENS) is strictly greater than 0 MWh/hour, after considering the effect of curtailment sharing within the market coupling algorithm.

Article 6

Quantification of the contribution

The maximum entry capacity for cross-border participation is hereafter referred to also as “the contribution”. The contribution shall be calculated as the average of imports during scarcity hours and shall be expressed in MW.

The contribution of each neighboring country or bidding zone to the adequacy of the considered country or bidding zone is determined as the average contribution of the exports from the neighboring bidding zone to the considered bidding zone, during all scarcity hours. This average contribution will be calculated as the average of all contributions during all different single and simultaneous scarcity hours, considering the curtailment sharing rule within the market coupling algorithm.

Beyond the average indicator, the National Resource Adequacy Assessments (NRAA) may analyse the statistical distribution of the contribution over all scarcity hours, after the recommendation of Regional Coordination Centres (RCCs) to TSOs, pertinent to Article 26(7) of Regulation (EU) 2019/943.

Article 7

Contribution of bidding zones to adequacy under flow-based

The contribution of bidding zones within the same ‘flow-based’ Capacity Calculation Region (CCR) to the considered bidding zone for a specific scarcity hour is determined as the weighted net position for all bidding zones exporting to the considered bidding zone, and zero for all bidding zones importing from the considered bidding zone.

Given a bidding zone B – the “considered bidding zone” – at a given scarcity hour and given other bidding zones A_i which are inside the same capacity calculation region (CCR) as bidding zone B, the contribution of the other bidding zones A_i to the bidding zone B during that scarcity hour shall be calculated as follows:

- 1) In case zone A_i has an exporting position “ A_i ” within the considered CCR:

$$A_i \rightarrow B = B_{import} * \frac{A_i}{\sum A_i}$$

Where:

B_{import} corresponds to the total balance, being negative as B shall be importing, of the bidding zone B at that given scarcity hour.

$\sum A_i$ corresponds to the sum of all exports within the considered CCR for that scarcity hour.

2) In case zone A_i has an importing position within the considered CCR:

$$A_i \rightarrow B = 0$$

Article 8

Contribution of bidding zones to adequacy under Net Transfer Capacity (NTC)

The contribution of a country or bidding zone connected with an NTC to the considered bidding zone at a specific hour is determined by the market exchange for that hour if positive (export from the country/bidding zone or, equivalently, import of the considered bidding zone) and zero if the considered bidding zone is exporting through the given NTC.

Article 9

Link to the ERAA methodology, RCCs recommendation and national studies

The calculation of the contribution shall be consistent with the methodology, assumptions and scenarios of the latest European Resource Adequacy Assessment (ERAA) pertinent to Article 23 of Regulation (EU) 2019/943.

The calculation shall consider the latest available “Scenarios with Capacity Mechanisms” including economic viability checks under ERAA pertinent to Article 23 of Regulation (EU) 2019/943 “*reflecting the differing likelihoods of the occurrence of resource adequacy concerns which the different types of capacity mechanisms are designed to address*”.

Regarding assumptions of transmission capacity, the calculation of the contribution shall be consistent with the assumption used in the ERAA assessment and hence incorporate the relevant grid modifications applicable to the different target time horizons considered in the assessment.

RCCs shall inform TSOs upon their recommendation in case the results of this ERAA do not ensure that Reliability Standard – defined by the methodology pertinent to Article 25 of Regulation (EU) 2019/943 – is met for countries with an existing or approved capacity mechanism.

TSOs shall assess the impact of the above-mentioned ERAA results when setting the maximum entry capacity available for the participation of foreign capacity based on the recommendation of the RCCs within the national assessments pertinent to Article 24 of Regulation (EU) 2019/943. TSOs when setting the capacity available for the participation of foreign capacity in national assessments, pertinent to Article 24 of Regulation (EU) 2019/943 and based on the recommendation of the RCCs, shall use a methodology consistent with the ERAA methodology pertinent to Article 23 of Regulation (EU) 2019/943 and the methodology here presented for the calculation of the contribution.

If the result of the ERAA assessment shows that the considered country, having an existing or approved capacity mechanism, is significantly not respecting its national reliability standard target, (hence is

not adequate), the NRAA may calibrate the pertinent ERAA scenario chosen for the purposes of setting the maximum entry capacity available for the participation of foreign capacity within the capacity mechanism of the Member State performing the NRAA.

This shall be done to ensure ex-ante that the reliability standard fixed by the relevant authorities is met when setting the maximum entry capacity available for the participation of foreign capacity. This calibration shall happen by adding or removing capacities in the considered bidding zone until its targeted reliability standard is met.

Article 10

Simultaneous scarcity situations

The methodology shall provide the contribution that each of the different simultaneous scarcity situations (single scarcity situations, double scarcity situations, triple scarcity situations, etc.) has into the total contribution, within all scarcity hours considered.

Bilateral scarcity ratios, per-border between each relevant electrical neighbor, constructed from the above-mentioned simultaneous scarcity contributions, shall also be calculated.

The bilateral scarcity ratio is calculated as the cumulative contribution for the corresponding border of all single and simultaneous scarcity contributions within all scarcity hours considered.

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Section 2

Methodology for sharing the revenues in accordance with Article 26.11(b) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

Article 11

Scope of the Revenue Sharing Methodology

1. Based on Regulation (EU) 2019/943, the following Revenue Sharing Methodology can be applied for the sharing of the Revenues where capacity mechanisms allow for direct cross-border participation by foreign capacity in two neighbouring Member States over the same Delivery Period in accordance with Article 26(9) of Regulation (EU) 2019/943;
2. This Revenue Sharing Methodology does not need to be applied for the sharing of revenues if the neighbouring Member State does not apply a capacity mechanism or applies a capacity mechanism which is not open to direct cross-border participation by foreign capacity over the same Delivery Period, in accordance with Article 26(9) of Regulation (EU) 2019/943;
3. This Revenue Sharing Methodology does not apply when interconnectors participate directly in the capacity mechanism in the sense of Article 26(2) of Regulation (EU) 2019/943. For a Member State organising a capacity mechanism open for direct cross-border participation, the Revenue Sharing Methodology applies separately on each border with another Member State with a capacity mechanism open for cross-border participation by foreign capacity.
4. The sharing of the revenues should provide incentives for the development of transmission capacity. The sharing key should therefore ensure that:
 - a. When transmission capacity between two Member States is deemed the scarce resource limiting the participation of eligible Foreign Capacity in the capacity mechanism, the sharing of revenues shall result in a proportionate incentive to further develop transmission capacity on the border considered.
 - b. When transmission capacity is not deemed the scarce resource limiting the participation of foreign eligible capacity in the capacity mechanism, no additional incentives for further development of the transmission capacity on the considered border shall be provided for adequacy reasons.
5. To determine to what extent the transmission capacity between two Member States is deemed the scarce resource limiting the participation of foreign eligible capacity in the capacity mechanism, the expected level of concurring system stress events between the two Member States in question shall be considered.
6. In case the Maximum Entry Capacity has not been fully allocated to eligible Foreign Capacity, the transmission capacity is in any case not deemed the scarce resource and no incentive for further development of the transmission capacity on the considered border shall be provided.
7. When transmission capacity between two Member States is deemed a scarce resource limiting the participation of eligible Foreign Capacity in the Capacity Mechanism, the incentive for further developing the transmission capacity on the considered border should be provided to those having invested in the transmission capacity on the considered border, i.e. to the concerned TSOs. The

determination of the revenue to be considered for sharing and the determination of the sharing key takes place after the allocation of the Maximum Entry Capacity has taken place.

Article 12

Determination of the total revenue considered for sharing

1. The total revenue considered for sharing are the revenues collected by the Capacity Mechanism Operator arising through the allocation of the Entry Capacity to foreign capacity:
 - a. In case of an implicit allocation of the Entry Capacity to eligible Foreign Capacity, the total revenue considered for sharing results from the positive price difference between the price offered in the capacity mechanism by last contracted (based on the offered price) capacity and the last contracted (based on the offered price) foreign capacity multiplied by Maximum Entry Capacity, if it has been fully allocated.

This includes implicit allocation mechanisms where the Entry Capacity is allocated in a two-step manner by first preliminarily allocating the Entry Capacity to eligible foreign capacity through a pre-auction and then transferring the successful pre-auction bids to the capacity mechanisms' main auction.
 - b. In case of an explicit allocation of the Entry Capacity to eligible capacity the total revenue considered for sharing are the revenues directly from the auctioning of the Entry Capacity.

Article 13

Determination of the sharing key

1. The due revenue to a TSO is determined in two steps:
 - a. Step 1: Taking into account the principles set out in paragraphs 1, 2 and 3 of Article 11, the part of the total revenue considered for sharing between the concerned TSO shall be determined as set out in Article 12 of this draft Proposal.
 - b. Step 2: Once the part of the total revenue to be shared has been determined in step 1, the sharing key between all concerned TSOs shall be determined.
2. The percentage of the total revenue considered for sharing as set out in Article 12 that will be shared between the concerned TSOs is determined as follows.

[Note that ENTSO-E currently proposes two options for this step. The public consultation outcome shall be taken into account when finally proposing on a single option]

[option 1]

- a. The percentage of the total revenue considered for sharing is determined by multiplying the total revenues considered for sharing with one minus the likelihood of concurrent system stress between the considered neighbouring countries.

- b. For the purpose of the calculation of the percentage mentioned in (a) the likelihood of concurrent system stress between the considered neighbouring countries is determined in the central scenario used in the latest approved version available at the moment of allocating the Entry Capacity of the European resource adequacy assessment as meant by Article 23 of Regulation (EU) 2019/943 as the ratio between the number of hours that both considered countries are at the same moment observing energy not served divided by the total number of hours that the country organising the capacity mechanism is observing is observing energy not served.

[Option 2]

- a. The percentage of the total revenue considered for sharing is:
 - i. Equal to 100 % when (one minus the likelihood of concurrent system stress between the considered neighbouring countries) exceeds $[1-X]$ % (X could be on a range between 5% and 33%)
 - ii. Equal to 0% when (one minus the likelihood of concurrent system stress between the considered neighbouring countries) is below $[X]$ % (X could be on a range between 5% and 33%)
 - iii. Between the benchmarks mentioned in (i) and (ii), a linear interpolation between 0% and 100% is applied.
 - b. For the purpose of the calculation of the percentage mentioned in (a) the likelihood of concurrent system stress between the considered neighbouring countries is determined in the central scenario used in the latest approved version available at the moment of allocating the Entry Capacity of the European resource adequacy assessment as meant by Article 23 of Regulation (EU) 2019/943 as the ratio between the number of hours that both considered countries are at the same moment observing energy not served divided by the total number of hours that the country organising the capacity mechanism is observing is observing energy not served.
3. The part of the total revenue to be shared as determined in Article 13(2) shall be shared between the TSOs based on the following rules:
 - a. The TSOs on both sides of the border shall receive their share of the revenue based on a 50%-50% sharing key. In specific cases the concerned TSOs may also use a sharing key different from 50%-50%. Such cases may involve, but are not limited to, different ownership shares or different investment costs.

- b. In case specific interconnectors are owned by entities other than TSOs or entities other than TSOs have a share in the investment costs of the interconnector, the reference to TSOs in this Article shall be understood as referring to those entities.
4. To the extent there remains a part of the total revenue to be considered for sharing following the above two-step approach, this part remains with the TSO of the Member State organising the Capacity Mechanism.

DRAFT

Section 3

Common rules to carry out availability checks in accordance with Article 26.11(c) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

Article 14

Scope of the common rules to carry out availability checks

1. With respect to Availability checks, according to Article 22(1) in point (d) of Regulation (EU) 2019/943, any capacity mechanism shall treat capacity providers by means of a transparent, non-discriminatory and competitive process. Capacity mechanisms shall be open to direct cross-border participation of capacity providers located in another Member State, subject to the conditions laid down to this methodology, which aims at enabling transparent, non-discriminatory and competitive processes for every capacity provider participating to a given capacity mechanism, regardless of its location.
2. According to Article 26(11) (d) established common rules for the carrying out of Availability checks shall address all contracted capacity, irrespective of the nature or technology used. Nonetheless, different methods can be used to check availability regarding the diversity and the distinctive features of each participating technology.
3. According to Article 26(10) of Regulation (EU) 2019/943, TSOs where the capacity is located shall carry out Availability checks. In particular, the collaboration between the concerned TSOs is crucial, in order for the Availability checks to be carried out as equivalently as possible among foreign and domestic providers.
4. In principle, the capacity obligation for availability shall be verified based upon predefined criteria, such as transparent market signals and forecasts for system margins and demand levels.
5. The scope of the Common Rules related to Availability is limited to Availability checks of contracted capacity during the delivery period. Other Availability checks might be applied outside the delivery period, e.g. to monitor that new capacity contracted is sufficiently progressing to be available during the delivery period.

Article 15

Principle of non-discrimination

1. Article 22 of Regulation (EU) 2019/943 enumerates the design principles by which capacity mechanisms should abide, among which in paragraph 1 in point (d): “*select capacity providers by means of a transparent, non-discriminatory and competitive process*”. Availability checks processes for Domestic and Foreign capacity should also abide to the principles of transparency and non-discrimination.

2. Availability checks for Foreign capacity contracted in the capacity mechanism should be carried out as equivalently as possible as for Domestic capacity, according to the rules of the capacity mechanism to which it participates. In order to satisfy this condition, if possible, Availability checks for Domestic and Foreign capacity should be carried out using the same:
 - a. Delivery period;
 - b. Frequency of Availability checks;
 - c. Availability check methodologies, as referred to in Article 5. If not directly applicable, the methodology foreseen by the national capacity mechanism rules should be applied as equivalently as possible, considering the features of the energy, balancing, and ancillary services market where Foreign capacity is participating, without prejudice to equivalent technical performance as referred in Article 26(2) of Regulation (EU) 2019/943.

Article 16

Roles of involved TSOs

1. According to Paragraph 10(b) of Article 26 of Regulation (EU) 2019/943, the TSO of the Member State where the Foreign capacity is located has to carry out Availability checks.
2. In order to enable effective cross-border participation, the TSO applying the capacity mechanism should act as facilitator in the Availability checks process. This role of facilitator, includes the obligation to help the TSO of the Member State where Foreign capacity is located in carrying out Availability checks by providing it with sufficient information, including at least:
 - a. Delivery period and availability obligation valid for the capacity mechanism;
 - b. expected minimum frequency of Availability checks;
 - c. timeframes for carrying out Availability checks and communicate results;
 - d. Availability check methodologies, as referred in Article 17;
 - e. format of data requested and data exchange process;

Such information could be provided by the TSO applying the capacity mechanism upon request or be specified in a bilateral agreement signed by the TSO applying the capacity mechanism and the TSO where the Foreign capacity is located.

3. The TSO where the Foreign contracted capacity is located should perform Availability checks and communicate results to the CM Operator within the time deadline agreed (e.g. in the bilateral technical agreement) in order to allow the settlement process and the calculation of Non-availability payments.
4. In case of multiple commitments, bilateral agreements should provide CM Operators and all TSOs involved the amount of capacity contracted in each capacity mechanism for each CMU.

Article 17

Application of Availability checks

1. Availability checks application is defined in the rules of each capacity mechanism and can be different based on the different obligations foreseen by the capacity contract and the different structure of national energy and ancillary services markets. The present Article includes principles and guidelines that should represent a best practice for enabling effective cross-border participation.
2. In any case the application of Availability checks must neither negatively affect the level of system security nor increase the costs for maintaining the same level of system security.
3. The probability to be subject to Availability checks for any capacity contracted through a capacity mechanism, should be non-zero during the Reference period.
4. Every contracted capacity, irrespective of the technology, should be subject to Availability checks according to a minimum frequency, if any, defined in capacity market rules and/or in bilateral agreements.
5. Contracted capacity is deemed to be available when:
 - a. it is actually delivering energy;
 - b. it is available to deliver in the energy market or ancillary services markets according to the normal functioning of these markets. The capacity is also deemed to be available if it has commitments related to the DA/ID or the ancillary services market but is not able to actually deliver due to national or supranational requirements including but not limited to congestion management.
6. Availability checks could include one or more of the following aspects:
 - a. monitoring of availability in the market (e.g. monitoring of energy delivered, bids submitted in the DA/ID market, bids submitted in the ancillary services markets and outage information);
 - b. testing of the actual capability to deliver (activation test).
7. When availability in the energy and/or ancillary services markets is already duly monitored, Availability checks in the capacity market should primarily rely on these checks for the capacity contracted in the capacity mechanism.
8. Availability checks for the capacity contracted in the capacity mechanism are not applied during the suspension of market activities according to Article 35(1) of the Commission Regulation (EU) 2017/2196, to the extent that it affects the calculation of availability.

Article 18

Reporting to the involved NRAs

1. After every Delivery period, or at least once a year, the CM Operator should share with involved NRAs, for Foreign capacity contracted, aggregated data on the average availability of contracted capacity during the Delivery period.

Section 4

Common rules for determining when a non-availability payment is due in accordance with Article 26.11(d) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

Article 19

Scope of the common rules for determining when a non-availability payment is due

1. With respect to non-availability payments, Regulation (EU) 2019/943 specifies that appropriate penalties shall apply to capacity providers that are not available in times of system stress (Article 22(1) point (i)). Following the principle of non-discrimination, non-availability payments shall apply equivalently for all participating capacity providers, concerning their natural distinctness.
2. Since capacity providers are able to participate in more than one capacity mechanism (Article 26(5) of Regulation (EU) 2019/943), it is critical to establish common rules in order to avoid windfall profits and ensure that capacity providers shall be able to meet the sum of capacity commitments undertaken and for which they are remunerated.
3. In order to avoid situations of double-counting of capacities in case of simultaneous scarcity situations (i.e., in case of overlapping of stress periods in neighbouring countries hosting capacity mechanisms), non-availability payments should provide a sufficient incentive to capacity providers to undertake only obligations they can actually fulfil also in case of simultaneous scarcity situations. For this reason, when availability commitments of different capacity mechanisms are overlapping, the capacity provider has to provide a capacity equal to the sum of availability commitments he has.
4. In any case, the non-availability payment shall reinforce the principle that not being available is never a profitable option. Force majeure situations and exemptions accepted by the TSOs shall normally be excluded from non-availability payments.

Article 20

Principle of non-discrimination

1. Article 22 of Regulation (EU) 2019/943 enumerates the design principles by which capacity mechanisms should abide, among which in paragraph 1 in point (d): “*select capacity providers by means of a transparent, non-discriminatory and competitive process*”.
2. Non-availability payments shall apply to Foreign capacity contracted in the capacity mechanism as equivalently as possible as for Domestic capacities according to the rules of the capacity mechanism. This equivalence regards the following non-exhaustive list of elements:
 - a. the amount of penalty imposed through the Non-availability payment;
 - b. the settlement timeframe;
 - c. the Non-availability payment methodology as referred in Article 23.

Article 21

Roles of involved TSOs and NRAs

1. The TSO where the capacity is located executes the Availability checks, according to Regulation (EU) 2019/943 Article 26(10). Results of Availability checks shall be timely communicated to the CM Operator, according to Article 16 of the Common Rules related to Availability. The Non-availability payment is then imposed on the Non-availability volume by the CM Operator which contracted with the capacity provider, according to the rules of the capacity mechanism. The CM Operator, or the contract counterpart in case it is different from the CM Operator, is also responsible for the collection of the Non-availability payment. The TSO where the capacity is located should not be held liable for any financial or other consequences related to the collection of the Non-availability payments.
2. Involved NRAs should support the enforcement of Non-availability payments to Foreign capacity contracted and monitor that their application is performed in a non-discriminatory way according to Regulation (EU) 2019/943 Article 26(13).

Article 22

Definition of Non-availability volume in case of multiple commitments

1. According to Article 26(6) of Regulation (EU) 2019/943, the capacity providers shall be required to make Non-availability payments when their capacity is not available. Also, in the case when the capacity providers participate in more than one capacity mechanism for the same Delivery period, they shall be required to make multiple Non-availability payments when they are unable to fulfil multiple commitments. In case of participation to multiple Capacity mechanisms, Non-availability payments should be paid in every Capacity market where the availability is offered.
2. Availability obligations can differ according to specific capacity mechanism rules and consequently Availability checks to the same CMU can be applied differently and result in a different amount of capacity considered available for each capacity mechanism in which the CMU is contracted.
3. The Non-availability volume for a given time of the Reference period attributed to each capacity mechanism in which the CMU is contracted is calculated, based on the results of Availability checks, as the difference, if positive, between:
 - a. the availability commitment for the capacity mechanism considered;
 - b. the product of:
 - i. the capacity considered available based on the results of Availability checks;
 - ii. the availability commitment for the capacity mechanism considered;
 - iii. the inverse of the sum of all availability commitments of the CMU in that hour.

For the purpose of computation of Non-availability volumes as detailed in this Article, the availability commitment for each capacity mechanism considered is deemed to be zero outside the Reference period.

4. The methodology described at the present Article is re-assessed 2 years after its first application by ENTSO-E and possible changes can be submitted to ACER for approval according to Article 27(4) of Regulation (EU) 2019/943.

Article 23

Application of Non-availability payments

1. Non-availability payments application is defined in the rules of each capacity mechanism and can be different based on the different obligations foreseen by the capacity contract and the different structure of national energy and ancillary services markets. The present Article includes principles and guidelines that should represent a best practice for enabling effective cross-border participation.
2. In case of planned unavailability of the CMU, alternative penalties or exemptions may apply. The same applies to unavailability due to any measures taken by system operators or any other competent authority that prevent the market participation of the CMU;
3. Stop loss limits might be applied to Non-availability payments;
4. Escalation of penalties should be applied in case of persistent unavailability of contracted capacity;
5. Contract termination fees, if any, should at least equal the payment due for Non-availability payment to prevent arbitration and should include the return of undue remuneration.

Article 24

Reporting to the involved NRAs

1. After every Delivery period, the CM Operator applying the capacity mechanism should share with involved NRAs upon request, for Foreign capacity contracted, data on Non-availability payments of contracted capacity during the Delivery period.

Section 5

Terms of operation of the Registry in accordance with Article 26.11(e) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

Article 25

Scope of the terms of operation of the Registry

1. The Registry is a common digital platform to which Registry Users have free and continuous access.
2. The Registry shall support the processes for the registration of capacity providers located in another Member State and shall provide means for communication between Registry Users.
3. The TSOs located in the country where the Capacity Mechanism is applied, as well as the CM Operators are Registry Users.
4. The TSO, where the CMU is located, becomes a Registry User following the request by a capacity provider to be registered in the Registry.
5. The Registry shall contain information on the eligibility of CMUs to participate in a Capacity Mechanism of other Member States than the one where it is located.
6. The Registry shall include the information on prequalification where relevant and the final acceptance of CMUs to participate in a Capacity Mechanism of other Member States than the one where it is located. This includes compliance with eligibility rules determined specifically for a capacity mechanism.
7. The Registry shall contain information on the allocation of Entry Capacity.
8. The Registry shall ensure the highest level of operating and personal data security.
9. The Registry shall be operated and maintained by the ENTSO-E.

Article 26

Scope of data

1. The Registry shall contain data provided by the capacity providers to the Foreign TSO in the registration process.
2. The Registry shall contain the following information on capacity providers:
 - a. Eligibility status obtained for all Capacity Mechanisms;
 - b. Participation status in all Capacity Mechanisms, including:
 - i. intermediary and final acceptance result for participation
 - ii. Member State of Capacity Mechanism,

- iii. volume of capacity obligation,
 - iv. Delivery Period,
 - v. participation in primary and/or secondary market,
 - c. their allocated entry capacity expressed in MW.
3. The CM operator shall update the amount of the allocated entry capacity referred to in Article (2)(c) following a notification from the capacity provider of a transfer between eligible capacity providers pursuant to Article 26(14) of Regulation (EU) 2019/943.
4. The involved CM operator shall update the information referred to in Article 26.2.

Article 27

Data access and reporting

1. All relevant Registry Users can view and edit in the Registry the data provided in accordance to Article 26(1).
2. The capacity provider shall submit any update of the data provided in accordance to Article 26(1) to the Foreign TSO without delay. The Foreign TSO updates the data provided in accordance to Article 26(1) in the Registry in a timely manner.
3. The CM operator has access to the data referred to in Article 26(1) and Article 26(2) of the registered capacity providers' that are willing to participate in the CM.
4. The Registry shall generate data reports:
 - a. aggregated and, when required, anonymous data of the capacity providers with capacity obligations, location of the CM and delivery periods.
 - b. data of the capacity providers containing capacity obligations, location of the CM and delivery periods.
5. Relevant data reports shall be available to:
 - a. ACER for data reports referred to in Article 27(4)(a);
 - b. NRA of the Member State where the Capacity Mechanism is applied for data reports referred to Article 27(4)(b);
 - c. NRA of the Member State where the CMU is located for data reports referred to Article 27(4)(b);
6. Data reports referred to in Article 27(a) shall be prepared by ENTSO-E and sent upon request of ACER.
7. Data reports referred to in Article 27(b) shall be prepared by TSO where the Capacity Mechanism is applied.
8. Data reports referred to in Article 27(c) shall be prepared by TSO where the capacity is located.
9. The CM operator may announce the occurrence of system stress event for the relevant capacity mechanism by using the functionalities of the Registry.

Section 6

Common rules for identifying capacity eligible to participate in the capacity mechanism in accordance with Article 26.11(f) of the Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast)

Article 28

Scope of the common rules for identifying capacity eligible to participate in the capacity mechanism

1. To participate in the capacity mechanism of another Member State, capacity providers need to be registered with a positive result in the Registry. The positive registration result means that capacity provider was eligible to be registered in the registry.
2. A capacity provider requests the Foreign TSO to start the registration process, referred to in Article 28(1).
3. The rules and timeline of the request referred to in Article 28(2) shall be defined by the Foreign TSO, in close collaboration with the CM operator, and shall apply to the units located within its system.
4. The registration referred to in Article 28(1) does not entitle a capacity provider with an unconditional right for cross-border participation in a capacity mechanism as additional requirements for the participation of capacity providers may be defined by the CM operator.
5. Additional requirements referred to in Article 28(4) shall apply to foreign CMUs, and may, amongst others, include capacity thresholds and aggregation criteria. The requirements shall be checked in accordance with the rules of the relevant capacity mechanism. Such additional requirements should apply on both domestic and foreign CMUs or should be designed as proportionate measure so as to ensure the cost efficiency of cross-border participation.

Article 29

Registration processes

1. The Foreign TSO verifies the data submitted by the capacity provider and registers the capacity provider in the Registry.
2. The Foreign TSO shall inform the capacity provider about positive or negative result of the registration process and submit the information in the registry.
3. The Foreign TSO shall inform the CM Operator about the capacity provider's positive result of registration process or any update thereof with using the functionalities of the Registry.

Article 30

Eligibility check

1. A capacity provider that requests the Foreign TSO referred to in Article 28(1) to start registration shall submit the following data of its CMU:
 - a. corporate credentials;
 - b. facility address;
 - c. capacity and aggregation;
 - d. technology type and fuel;
 - e. metering points;
 - f. network operator;
 - g. CO₂ emission limits information as referred to Regulation (EU) 2019/943 Article 22(4).
2. If a CMU consists of aggregated units, the data referred to in Article 30(1) shall be submitted for each unit forming part of the CMU.
3. Data submitted by the capacity provider referred to in Article 30(1) shall be up-to-date.
4. The Foreign TSO approval of data submitted pursuant to Article 30(1) is required to successfully pass the registration referred to in Article 28(1).
5. The data of the registered units referred to in Article 30(1) shall be verified at least once a year.
6. The negative result of the registration referred to in Article 28(1) or negative result of the eligibility verification referred to Article 30(5) and Article 26(2) results in the loss of the eligibility. From that point in time, the CMU which has lost its eligibility cannot enter into new capacity contracts until positive result of the registration referred to in Article 28(1).
7. The consequences of the negative results, referred to in Article 30(6), shall enter into force without prejudice to the commitments or contracts concluded before the date of the loss of eligibility.